IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

FAMILY COURT APPEAL NO. 62 OF 2004

Shri Chandrashekhar Bhikaji Gatkal
R/o Patil Lane No.4 College Road,
Nasik. .. . Appellant
(Org. Petitioner)

Vs.

Sau. Kalpana Chandrashekhar Gatkal,
Age 33 years, Occ. Labourer,
R/o C/Op. Lilabai Ramdas More,
Ozar (Ambika) Tal. Kalwan,
Dist. Nashik. ..Respondent
(org. Respondent)

Ms. Smita Gaidhani for the appellant.

CORAM : F.I. REBELLO &
ANOOP V.MOHTA, JJ.

DATE : 17TH AUGUST, 2004.

OORAL ORDER

. The appeal was filed to challenge the order of the Family Court dated 15th March, 2004, whereby the Family Court has been pleased to dismiss the petition for divorce, filed by the appellant-husband on the ground that the respondent after solemnisation of marriage had voluntary sexual intercourse with some other person than the appellant herein. This is based on the purported statement to have been made by the respondent in the Criminal Proceeding No. 151/1999, on 21/12/1998 that she had delivered a daughter. The

contention of the appellant

is that there was no cohabitation with the Respondent since July, 1996. It is the further case of the appellant that he had filed petition for restitution of conjugal rights H.M.P. No. 227 of 1997, which in view of the statement made in criminal case was withdrawn and thereafter have filed the present petition.

2. While considering the matter the learned Family Court in paragraph 8 of the judgment has noted that the appellant neither filed copy of the criminal Case No.151/1999 to show that in deposition such a statement was made. The learned court found that there was no material to show that respondent had committed an act of adultery and on that ground, was pleased to dismiss the petition.

3. We directed the learned Counsel to hand over to us the evidence recorded in the said criminal case. In the examination-in-chief we found the following evidence recorded;

> "I was taken back by sweet talks but they continued ill treating me. When I went back

> after the maintainence petition and compromise I became pregenant. I delivered a baby girl in my mother's house. The girl child is now one year old. The accused came to see me at my mother's house after my delivery. The accused told me to return home at Nasik after 1 1/4th month of delivery. I delivered on 21/12/1998. I returned home along with my mother on 5/2/1999. My mother came to leave me and my baby. My mother left house on next day after leaving me
>
> to my matrimonial home."

In the cross-examination the evidence which has come, which is as under;

> It is true that after the order of maintenance in the maintenance application I and accused compromised before the Loknyalaya held at Kalwan and we both signed the compromise pursis and agreed to cohabit together. It is not true to say that on the same day we both faught and I did not go with him for cohabitation."

It is therefore, clear from this evidence, that it is contrary to what the appellant is contending.The consistent case of respondent has been that after compromise terms filed in maintenance application, there was cohabitation. There is no other evidence to prove otherwise. Considering that section 112 of Evidence Act must come into play. If that be the case, it cannot be said that the appellant herein has made out case of adultery. We therefore, find no case for interference

with the order passed by the learned Family Court. Hence appeal is rejected.

. Parties concerned to act on a simple copy of this order, duly authenticated by the Court Stenographer of this Court.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]